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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 1ST DAY OF APRIL 1998

BEFORE

THE HON'BLE MR.JUSTICE H.N.NARAYAN

C.R.P.NO.857/1998

G.Hemavathi Shivashankar
w/o.T.S.Shivashankar
aged 54 years
Permanent r/o. School Road
Somavarpet, Kodagu Dist.
Represented by her mother
as Power of Attorney Holder
Smt. D.R.Shanthamma
w/o. G.H. Guru
aged about 75 yrs.
r/o. School Road
Somavarpet, Kodagu Dist.

.. Petitioner

(By Smt. Hemalatha Mahishi - Adv.)

- vs -

1. Dr. Tumkur S.Shivashankar
aged 57 years
r/o. No.303, 2nd street
XX West, Barksidale, A.F.B.L.A.
71110 U.S.A.

2. Thiput Nagaraj Usha
d/o. Nagaraj
aged 47 years
r/o. same as given for
1st respondent.

.. Respondents
(By Sri.B.M.Chandrashekar & Sri.C.M.Basavarya - Adv.)

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C.R.P. filed u/s.115 of CPC against the order
dated 26-2-1998 passed in O.S.No.1960/83 on the
file of the City Civil Judge, Bangalore, ordering
to post this case to hear on 28-5-1998.

This C.R.P. coming on for admission this day,
the Court made the following :

O R D E R

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O R D E R

This matter coming on for admission today, the respondents' counsel though served, remained absent. Hence, it is taken up for final disposal; heard and disposed of by this order.

2. The petitioner-plaintiff has filed a suit in the Court of the City Civil Judge Court, Bangalore in the year 1983 for declaration of the status of the plaintiff as the wife of respondent-1-first defendant. The Court has concluded ~~regarding~~ the evidence. While the matter was posted for arguments, the learned counsel for the plaintiff filed a memo on 10-2-1998 bringing to the notice of the Court below that as per Section 7 and 8 of the Family Court Act, the said Court has no jurisdiction to try the suit and requested the court to transfer it to the Family Court, Bangalore. The respondents have filed their objections and the trial Judge has posted the matter to 28-5-1998 to hear the said objections. The legality of the said order is questioned in this revision.

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3. The learned counsel for the petitioner has contended that Under Section 7(1)(b) of the Family Court Act 1984, a suit or proceedings for a declaration as to the validity of a marriage or is to the matrimonial status of any person have to be exercised only by the Family Court and none other. Therefore, there is a clear exclusion of the Civil Court to try such matters. By operation of law, the suit should have been automatically transferred to the jurisdiction of the Family Court. The contention of the respondent before the trial Court was that the trial Court has recorded the evidence and therefore, the trial Court has to pass the judgment. This is an unreasonable submission made by the respondents calling upon a Court which has no jurisdiction to pass a judgment and which if done would become a nullity. The learned Judge should have considered this provision and pass the order immediately as the parties are eager to take a decision from the competent court. Revision is, therefore, allowed. The trial Court is directed to transfer

or

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the suit to the file of the Family Court
Bangalore forthwith.

Sd/-
JUDGE

rs/-